

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF A SEWER REVENUE BOND, SERIES 2016, BY THE CITY OF NORTH LITTLE ROCK, ARKANSAS, FOR THE PURPOSE OF PAYING THE COST OF ACQUIRING, CONSTRUCTING, AND EQUIPPING CERTAIN EXTENSIONS, BETTERMENTS, AND IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY; AUTHORIZING SALE OF THE BOND; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST AND SERVICING FEE ON THE BOND; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of North Little Rock, Arkansas (the "**City**"), a city of the first class, owns and operates a wastewater collection and treatment system (the "**System**"); and

WHEREAS, the Sewer Committee of the City (the "**Committee**") has had prepared by Marlar Engineering Company, Inc., an engineering report and facility plan for extensions, betterments, and improvements to the System in order to improve collection, transportation and performance of the System (Arkansas Natural Resources Commission Project No. WRD-004-015 (the "**Improvements**"), and estimates of the cost of the Improvements (the "**Engineering Report**"), which engineering report has been approved by the Committee and recommended to the City Council, and copies of which are on file in the offices of the City Clerk and the Committee; and

WHEREAS, the engineering report has estimated the cost of the Improvements, including the furnishing of all labor, materials, and engineering and other services in connection with the completion thereof and all bond issuance costs, to be at least \$30,000,000.00; and

WHEREAS, to secure funds necessary to finance the planning, designing, and construction of the Improvements and the engineering, legal, and other costs incidental to the issuance of a revenue bond upon the most favorable terms to the City and the users of the System, the City is making arrangements for the sale of its sewer revenue bond in the principal amount of \$30,000,000.00 to the Arkansas Development Finance Authority, as purchaser (the "**Bondholder**"), at a price of par, which bond shall bear interest at the rate of 1.25 percent per annum, pursuant to a Bond Purchase Agreement (the "**Agreement**") among the City, the Bondholder, and the Arkansas Natural Resources Commission (the "**ANRC**"), which has been presented to and is before this meeting; and

WHEREAS, the City is required to pay to the Arkansas Development Finance Authority, as servicer (the "**Authority**"), a semiannual servicing fee equal to one percent per annum of the outstanding principal amount of the bond (the "**Servicing Fee**"); and

WHEREAS, the Bondholder proposes to pledge the bond as collateral for the payment of its Revolving Loan Fund Revenue Bonds (the "**ADFA Bonds**"), pursuant to the Authority's

Revolving Loan Fund Revenue Bond Program General Bond Resolution, adopted May 5, 2009, as subsequently supplemented and amended, under the terms of which Regions Bank is designated as trustee and paying agent for the ADFA Bonds; and

WHEREAS, the City is authorized under Amendment No. 65 to the Constitution of the State of Arkansas ("**Amendment 65**") and Act No. 132 of 1933, as amended ("**Act 132**") (A.C.A. §14-235-201 et seq.), to issue and sell revenue bonds for the purpose of servicing the cost of planning, designing, and constructing the Improvements, including printing, legal, and other expenses incidental to the issuance of the bond and to enter into the Agreement; and

WHEREAS, the City has outstanding its \$7,000,000 original principal amount Sewer Revenue Bond (Faulkner Lake Project), Series A 1995 (the "**Series A 1995 Bond**"), authorized by City Ordinance No. 6880 duly adopted and approved February 27, 1995; its \$4,000,000 original principal amount Sewer Revenue Bond (Five-Mile Creek Project), Series B 1995 (the "**Series B 1995 Bond**"), authorized by City Ordinance No. 6881, duly adopted and approved February 27, 1995; its \$10,000,000.00 original principal amount Sewer Revenue Bonds, Series 2001 (the "**Series 2001 Bond**") authorized by City Ordinance No. 7325 duly adopted and approved on December 11, 2000; its \$205,000.00 original principal amount Sewer Revenue Bond authorized by City Ordinance No. 7378 duly adopted and approved on July 23, 2001; and its \$14,000,000.00 Sewer Revenue Bond, Series 2008 (ANRC) authorized by City Ordinance No. 8083 duly adopted and approved on June 23, 2008; and its \$21,000,000.00 original principal amount Sewer Revenue Bond, Series 2012 (the "**Series 2012 Bond**") authorized by City Ordinance No. 8480 duly adopted and approved on October 8, 2012 (the "**Prior Bonds**").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS THAT:

SECTION 1: The Improvements shall be accomplished. The accomplishment of the Improvements shall be under the control and supervision of, and all details in connection therewith shall be handled by, the Committee, and the Committee shall make all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers. The Committee shall let all contracts pursuant to and in accordance with existing laws and shall require such performance bonds and insurance from the contractors as will, in its judgment, fully insure the completion of the Improvements in accordance with the engineering report so as to fully promote and protect the best interests of the City and the Bondholder.

SECTION 2: The sale to the Bondholder of \$30,000,000.00 aggregate principal amount of a bond by the City at a price of par for a bond bearing interest at the rate of 1.25 percent per annum and subject to a Servicing Fee of one percent per annum and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby, approved and the bond is hereby authorized to be sold to the Bondholder. The Mayor is hereby authorized and directed to execute and deliver the Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Agreement. The Agreement is hereby approved in substantially the form attached hereto as Exhibit "A" with such changes as may be approved by the Mayor, his execution to constitute complete evidence of such approval.

SECTION 3: The City Council hereby finds and declares that the period of usefulness of

the System after completion of the Improvements will be more than 25 years, which is longer than the term of the bond.

SECTION 4: Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 and Act 132, the City of North Little Rock, Arkansas Sewer Revenue Bond, Series 2016 (the "**Series 2016 Bond**"), is hereby authorized in the total principal amount of \$30,000,000.00 (or so much thereof as shall be advanced in the payment of the Series 2016 Bond), the proceeds of the sale of which are necessary to provide sufficient funds, together with other funds available, to pay the cost of accomplishing the Improvements, including, without limitation, engineering fees, legal fees, and other necessary expenses incidental to the accomplishment of the Improvements, and to the issuance of the Series 2016 Bond.

The Series 2016 Bond shall bear interest at the rate of 1.25 percent per annum and shall be subject to a Servicing Fee of one percent per annum based upon a 360-day year of twelve consecutive 30-day months compounded semiannually. The Series 2016 Bond shall be dated the date of delivery to the Bondholder and payment of the par value thereof (or, if purchased in installments as provided herein, payment of the first installment) by the Bondholder. Accrued interest and the Servicing Fee only shall be payable on each April 15 and October 15, commencing April 15, 2017, to and including October 15, 2020. Principal, interest, and the Servicing Fee shall be payable on April 15, 2021, and on each April 15 and October 15 thereafter until the unpaid principal is paid in full as follows:

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

North Little Rock, Arkansas
ANRC Loan#: 01068-CWRLF-L
ANRC Project#: WRD-004-015

Amortization Schedule - 20 Years - Semi-Annual Payments

as of date: Aug 9, 2016

Loan Closing Date Oct 15, 2016	Disbursement Cut-off Date Oct 15, 2020	First Payment Date Apr 15, 2021	Repayment Length Years 20	Annual Lending Rate 2.250%	Total Principal \$30,000,000.00	Semi-Annual Payment \$ 935,505.00
---	---	--	------------------------------------	-------------------------------------	---------------------------------------	---

Semi-Annual Payment						Outstanding Principal Balance
Period	Date	Payment Amount	1.000% Servicing Fee	1.250% Interest	Principal	
						\$ 30,000,000.00
1	Apr 15, 2021	\$ 935,505.00	\$ 150,000.00	\$ 187,500.00	\$ 598,005.00	29,401,995.00
2	Oct 15, 2021	935,505.00	147,010.00	183,762.00	604,733.00	28,797,262.00
3	Apr 15, 2022	935,505.00	143,986.00	179,983.00	611,536.00	28,185,726.00
4	Oct 15, 2022	935,505.00	140,929.00	176,161.00	618,415.00	27,567,311.00
5	Apr 15, 2023	935,505.00	137,837.00	172,296.00	625,372.00	26,941,939.00
6	Oct 15, 2023	935,505.00	134,710.00	168,387.00	632,408.00	26,309,531.00
7	Apr 15, 2024	935,505.00	131,548.00	164,435.00	639,522.00	25,670,009.00
8	Oct 15, 2024	935,505.00	128,350.00	160,438.00	646,717.00	25,023,292.00
9	Apr 15, 2025	935,505.00	125,116.00	156,396.00	653,993.00	24,369,299.00
10	Oct 15, 2025	935,505.00	121,846.00	152,308.00	661,351.00	23,707,948.00
11	Apr 15, 2026	935,505.00	118,540.00	148,175.00	668,790.00	23,039,158.00
12	Oct 15, 2026	935,505.00	115,196.00	143,995.00	676,314.00	22,362,844.00
13	Apr 15, 2027	935,505.00	111,814.00	139,768.00	683,923.00	21,678,921.00
14	Oct 15, 2027	935,505.00	108,395.00	135,493.00	691,617.00	20,987,304.00
15	Apr 15, 2028	935,505.00	104,937.00	131,171.00	699,397.00	20,287,907.00
16	Oct 15, 2028	935,505.00	101,440.00	126,799.00	707,266.00	19,580,641.00
17	Apr 15, 2029	935,505.00	97,903.00	122,379.00	715,223.00	18,865,418.00
18	Oct 15, 2029	935,505.00	94,327.00	117,909.00	723,269.00	18,142,149.00
19	Apr 15, 2030	935,505.00	90,711.00	113,388.00	731,406.00	17,410,743.00
20	Oct 15, 2030	935,505.00	87,054.00	108,817.00	739,634.00	16,671,109.00
21	Apr 15, 2031	935,505.00	83,356.00	104,194.00	747,955.00	15,923,154.00
22	Oct 15, 2031	935,505.00	79,616.00	99,520.00	756,369.00	15,166,785.00
23	Apr 15, 2032	935,505.00	75,834.00	94,792.00	764,879.00	14,401,906.00
24	Oct 15, 2032	935,505.00	72,010.00	90,012.00	773,483.00	13,628,423.00
25	Apr 15, 2033	935,505.00	68,142.00	85,178.00	782,185.00	12,846,238.00
26	Oct 15, 2033	935,505.00	64,231.00	80,289.00	790,985.00	12,055,253.00
27	Apr 15, 2034	935,505.00	60,276.00	75,345.00	799,884.00	11,255,369.00
28	Oct 15, 2034	935,505.00	56,277.00	70,346.00	808,882.00	10,446,487.00
29	Apr 15, 2035	935,505.00	52,232.00	65,291.00	817,982.00	9,628,505.00
30	Oct 15, 2035	935,505.00	48,143.00	60,178.00	827,184.00	8,801,321.00
31	Apr 15, 2036	935,505.00	44,007.00	55,008.00	836,490.00	7,964,831.00
32	Oct 15, 2036	935,505.00	39,824.00	49,780.00	845,901.00	7,118,930.00
33	Apr 15, 2037	935,505.00	35,595.00	44,493.00	855,417.00	6,263,513.00
34	Oct 15, 2037	935,505.00	31,318.00	39,147.00	865,040.00	5,398,473.00
35	Apr 15, 2038	935,505.00	26,992.00	33,740.00	874,773.00	4,523,700.00
36	Oct 15, 2038	935,505.00	22,619.00	28,273.00	884,613.00	3,639,087.00
37	Apr 15, 2039	935,505.00	18,195.00	22,744.00	894,566.00	2,744,521.00
38	Oct 15, 2039	935,505.00	13,723.00	17,153.00	904,629.00	1,839,892.00
39	Apr 15, 2040	935,505.00	9,199.00	11,499.00	914,807.00	925,085.00
40	Oct 15, 2040	935,492.00	4,625.00	5,782.00	925,085.00	-
TOTALS		\$ 37,420,187.00	\$ 3,297,863.00	\$ 4,122,324.00	\$ 30,000,000.00	

If, for any reason, the City does not request advance of the entire \$30,000,000.00 aggregate principal amount of the Series 2016 Bond, then in such event the Principal Amount of the Series 2016 Bond will be reduced to the amount actually advanced. Any reduction of the Principal Amount of the Series 2016 Bond pursuant to this provision shall result in pro rata reductions of the remaining installments of principal so that the weighted average life of the Series 2016 Bond immediately following any such reduction shall be substantially equal to the weighted average life of the Series 2016 Bond immediately prior to such reduction, and the City shall deliver a new Series 2016 Bond to the Bondholder reflecting the revised Principal Amount and payment schedule.

The Series 2016 Bond shall be issued in the form of a single typewritten bond, registered as to both principal and interest, payable to the Bondholder, or registered assigns, as set forth hereinafter in the bond form, and shall be numbered R16-1.

Payment of principal and interest shall be by check electronic or wire transfer to the Bondholder as shown on the registration books of the City which shall be maintained by the City Clerk as Bond Registrar, without presentation or surrender of the Series 2016 Bond (except upon final payment), and such payments shall discharge the obligation of the City to the extent thereof. The Manager of the System shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the Series 2016 Bond has been fully paid, it shall be delivered to the City Clerk and shall be canceled.

SECTION 5: The Series 2016 Bond shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City. In case the person holding the office of Mayor or City Clerk, whose signature shall appear on the Series 2016 Bond, shall cease to be such officer before the delivery of the Series 2016 Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery of the Series 2016 Bond. The Series 2016 Bond is not a general obligation of the City but is a special obligation; the principal of and interest on the Series 2016 Bond, and the Servicing Fee in connection therewith, are secured by and payable solely from revenues derived from the System, as hereinafter set forth. The Series 2016 Bond shall be a valid claim of the Bondholder only against such revenues, which revenues are hereby pledged and mortgaged for the equal and ratable payment of the principal of and interest on the Series 2016 Bond, and the Servicing Fee in connection therewith, subject and subordinate to the lien of the Prior Bonds, and shall be used for no other purpose except as in this Ordinance specifically provided. The principal of and interest on the Series 2016 Bond shall not constitute an indebtedness of the City within any constitutional or statutory debt limitation or restriction.

SECTION 6: The Series 2016 Bond shall be in substantially the following form and the Mayor and City Clerk are hereby authorized and directed to make all the recitals contained therein:

REGISTERED
No. R16-1

UNITED STATES OF AMERICA

REGISTERED
***\$ _____

STATE OF ARKANSAS
COUNTY OF PULASKI
CITY OF NORTH LITTLE ROCK
SEWER REVENUE BOND, SERIES 2016

Registered Owner: Arkansas Development Finance Authority

Principal Amount: Thirty Million Dollars (\$30,000,000.00)

KNOW ALL MEN BY THESE PRESENTS:

That the City of North Little Rock, Arkansas (the "**CITY**"), hereby acknowledges itself to owe, and for value received promises to pay to the order of the Registered Owner shown above, or registered assigns, but solely from the special fund provided therefor as hereinafter set forth, in lawful money of the United States of America, the Principal Amount shown above (or so much of the Principal Amount as should have been advanced as shown on the Record of Payment of Advances attached hereto), and to pay in like coin or currency interest thereon at the rate of 1.25 percent per annum from the date of each advance. A servicing fee of one percent per annum (the "**SERVICING FEE**") shall also be payable by the City to the Arkansas Development Finance Authority or its successor in the same manner and upon the same dates as interest hereon.

Interest on the unpaid balance of the total principal amount outstanding and the Servicing Fee shall be payable on April 15, 2017, October 15, 2017, April 15, 2018, October 15, 2018, April 15, 2019, October 15, 2019, April 15, 2020 and October 15, 2020. Principal, interest, and the Servicing Fee shall be payable on April 15, 2021 and on each April 15 and October 15 thereafter until the unpaid principal is paid in full as follows:

[Here will be inserted the amortization schedule set forth in Section 4 of this Ordinance.]

Payments of principal, interest and servicing fee due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the Registered Owner at its address shown on the registration book of the City maintained by the City Clerk as Bond Registrar, and such payments shall fully discharge the obligation of the City to the extent of the payments so made.

This bond is issued for the purpose of providing servicing of the costs of planning, designing, and constructing extensions, betterments, and improvements (the "**IMPROVEMENTS**") to the sewer system of the City (the "**SYSTEM**") and paying costs of authorizing and issuing this bond, and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Amendment No. 65 to the Constitution of the State of Arkansas ("**AMENDMENT 65**") and Act No. 132 of 1933, as amended ("Act 132") (A.C.A. § 14-235-201, *et seq.*), and pursuant to Ordinance No. _____ of the City, duly adopted and approved on _____, 2016 (the "**AUTHORIZING ORDINANCE**"). This bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation. The City shall not be obligated to pay the principal of this bond or the interest hereon except from the special fund provided from the revenues of the System. Reference is hereby

made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the Registered Owner of this bond.

This bond is not a general obligation of the City, but is a special obligation payable solely from revenues derived from the operation of the System, an amount of which sufficient to pay the principal of and interest on which is to be set aside for such payment in a special fund for that purpose identified as the Series 2016 Bond Fund. Reference is made to the Authorizing Ordinance for a detailed statement of the nature and extent of security, the rights and obligations of the City and registered owner of this bond, the terms and conditions upon which additional bonds may be issued on a parity of security with this bond, and the terms and conditions upon which this bond is issued, including without limitation the covenant of the City to maintain rates for sewer services which shall be sufficient to produce revenues adequate for the payment of the expenses of operation and maintenance of the System, to provide for the payment of the principal of and premium, if any, and interest on the outstanding bonds payable from System Revenues, including this bond and the Servicing Fee, as the same become due, to maintain any required debt service reserves, and to make the required deposit into a Sewer Depreciation Fund.

The flow of System Revenues is:

- First, to an Operation and Maintenance Fund;
- Second, to any bond fund and debt service reserve fund from which payments are to be made for the principal of and interest and servicing fees on bonds having a lien superior to the lien on revenues of the System in favor of this bond (the “**PRIOR BONDS**” as identified in the Authorizing Ordinance);
- Third, to the City's Sewer Revenue Bond Series 2016 Bond Fund securing this bond;
- Fourth, to the Authority, the servicing fee of one percent calculated on the same basis as interest on this bond; and
- Fifth, to a Sewer Depreciation Fund.

This bond may be assigned only upon the written approval of the ANRC, and in order to effect such assignment, the assignor shall promptly notify the City Clerk by registered mail, and the assignee shall surrender this bond along with a written assignment and written approval of the ANRC to the City Clerk for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the City Clerk) prior to such surrender for transfer.

This bond may be prepaid at the option of the City from funds from any source, in whole but not in part, at any time on or after October 15, 2026 at a prepayment price equal to the principal amount outstanding, plus accrued interest and Servicing Fee to the prepayment date. Notice shall be given of such prepayment to the registered owner of this bond at least 90 days prior to the prepayment date. Such notice shall be in writing mailed to the registered owner of this bond at the address appearing on the bond registration records of the City Clerk.

This bond is expressly made negotiable under Act 132 and is issued with the intent that the laws of the State of Arkansas will govern its construction.

No recourse shall be had for the payment of the principal of or interest on this bond or for any claim based thereon or upon any obligation, covenant, or agreement contained in this bond or the Authorizing Ordinance against any past, present, or future alderman, officer, commissioner or employee of the City or the Sewer Committee of the City (the "**COMMITTEE**"), or any incorporator, member, commissioner, director, alderman, trustee, officer, or employee of any successor of the City or the Committee, as such, either directly or through the City or the Committee or any successor of the City or the Committee, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, commissioner, director, alderman, trustee, officer, or employee as such is hereby expressly waived and released as a condition of and consideration for the issuance of this bond.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all acts, conditions, and things required to exist, happen, and be performed precedent to and in the issuance of this bond do exist, have happened, and have been performed in due time, form and manner as required by law; that the indebtedness represented by this bond does not exceed or violate any constitutional or statutory limitation; and that sufficient net revenues have been pledged to and will be set aside into the Series 2016 ADFA Bond Fund referred to above for the payment of the principal of and interest on this bond.

IN WITNESS WHEREOF, the City of North Little Rock, Arkansas, by its City Council, has caused this bond to be executed in its name by the manual signatures of the Mayor and City Clerk thereof, with the seal of the City impressed hereon, all as of the ____ day of _____, 2016.

CITY OF NORTH LITTLE ROCK,
ARKANSAS

By: _____
Mayor

ATTEST:

City Clerk (SEAL)

REGISTRATION CERTIFICATE

Date of Registration	Name of Registered Owner	Signature of City Clerk
	Arkansas Development Finance Authority	

RECORD OF PAYMENT OF ADVANCES

Date of Advance* ¹	Amount of Advance	Total Principal Outstanding	Signature of Vice President of Arkansas Development Finance Authority

SECTION 7: (a) The City has heretofore fixed sewer rates for the usage of the System by Ordinance No. 8768 adopted on October 26, 2015 (the "Rate Ordinance"). Reference is hereby made to the Rate Ordinance for the details thereof and for other provisions pertaining thereto.

(b) The City covenants and agrees that the rates established will produce total system revenues at least sufficient to pay the operation and maintenance expenses of the System, to pay the principal of and premium, if any, and interest on all outstanding bonds to which System revenues are pledged, as the same become due, to pay any trustee's or paying agent's fees in connection therewith, to pay the Servicing Fee as the same becomes due, to create and maintain any required debt service reserves, and to make the required deposits into the Sewer Depreciation Fund. The City also covenants and agrees that the rates shall, from time to time, as and when necessary, be increased to such an amount as will provide system revenues at least sufficient for the above purposes.

(c) The City further covenants and agrees that the rates shall never be reduced while any Prior Bonds, the Series 2016 Bond, and any additional bonds issued on a parity or priority of security therewith under the terms and conditions of the ordinances authorizing the Sewer Revenue Bonds ("**SEWER REVENUE BONDS**") are outstanding, unless (i) prior written consent thereto is obtained from the Bondholder in the ANRC; and (ii) there is obtained from an independent certified public accountant a written opinion, based upon the number of customers and customer usage as reflected by the records of the System, that the proposed new rates will produce sufficient net revenues (net revenues being gross revenues of the System less operation and maintenance expenses) from the operation of the System for the succeeding fiscal year and leave a balance equal to at least 125 percent of the maximum annual debt service requirements (principal, interest, Servicing Fees, and trustees' and paying agents' fees) on all Sewer Revenue Bonds then outstanding.

SECTION 8: The City covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell or lease the same, or any substantial portion thereof, without the prior written approval of the Bondholder and ANRC; provided, however, that nothing herein shall be construed to prohibit the City from making such dispositions of properties of the System and such replacements and substitutions for properties of the System as shall be necessary or incidental to the efficient operation of the System as a revenue-producing undertaking.

*¹ The date of each advance shall be the interest commencement date from which the principal amount of such advance bears interest and from which the Servicing Fee is calculated.

SECTION 9: All of the provisions of the ordinances authorizing the Prior Bonds identified above (including those incorporated therein by reference), as now in effect, and except those provisions clearly inapplicable hereto, including, without limitation, the provisions pertaining to the collection and the handling of the System Revenues and funds, to the operation, maintenance, and care of the System, and to the depreciation of the System, are hereby made applicable hereto and are incorporated herein by reference as though fully set forth at this point. The effect of the above covenant shall be to continue the applicable provisions in full force and effect even after the payment of the Prior Bonds until the Series 2016 Bond is paid, or provision made therefore. Notwithstanding the above, the City agrees to make monthly deposits into the bond funds for the Prior Bonds and the Series 2016 Bond (hereinafter created) prior to making any monthly payments into the Sewer Depreciation Fund.

SECTION 10: (a) After making the required payment into the Sewer Operation and Maintenance Fund, the bond funds for the Prior Bonds, and the bond funds for any additional bonds having a priority on the pledge of System Revenues over the pledge in favor of the Series 2016 Bond, if any, and after paying the Servicing Fee to the Authority in connection with the Series A 1995 Bond, the Series B 1995 Bond, the Series 2001 Bonds, the Series 2008 Bonds, and the Series 2012 Bonds, the City shall set aside from System revenues and make provision as set forth in subsection (b) below for the payment of the principal of and interest and Servicing Fee on the Series 2016 Bond by making a deposit into an account of the City in a special fund to be held by the Bondholder (the "**Series 2016 Bond Fund**"), and the Depreciation Reserve Fund.

(b) In order to pay the interest on the Series 2016 Bond, there shall be deposited into the Series 2016 Bond Fund on April 15, 2017, October 15, 2017, April 15, 2018, October 15, 2018, April 15, 2019, October 15, 2019, April 15, 2020 and October 15, 2020 the interest and Servicing Fee due on the Series 2016 Bond on such dates. Commencing on the first business day of each month thereafter, there shall be deposited into the Series 2016 Bond Fund an amount equal to one-sixth of the amount of principal of and interest on the Series 2016 Bond next due.

(c) If the net revenues of the System or the available proceeds of the Series 2016 Bond are insufficient to make any required interest payment on April 15, 2017, October 15, 2017, April 15, 2018, October 15, 2018, April 15, 2019, October 15, 2019, April 15, 2020 and October 15, 2020 or if the net revenues of the System are insufficient to make any required principal or interest payment into the Series 2016 Bond Fund on the first business day of any month thereafter, as provided in subsection (b) of this Section, then the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Series 2016 Bond Fund on the next semiannual payment date or on the first business day of the next month, as the case may be.

(d) When the moneys held in the Series 2016 ADFA Bond Fund which represent payments by the City and interest earnings thereon or proceeds of investments therefrom (collectively, "**City Funds**") shall be and remain sufficient to pay in full the principal of and interest on the Series 2016 Bond, the City shall not be obligated to make any further payments into the Series 2016 Bond Fund.

(e) All moneys in the Series 2016 Bond Fund representing City Funds shall be used solely for the purpose of paying the principal of and interest on the Series 2016 Bond, and the City shall automatically receive a credit for the amount of such City Funds on hand in the Series

2016 Bond Fund and available for the payment of any principal and interest currently due on an interest or principal payment date irrespective of whether the Bondholder has applied or caused to be applied such funds on that date for such purpose. The City shall receive a credit for all earnings and income derived from the investment of City Funds each April 15 and October 15, and such earnings and income shall be credited against the next six monthly payments, in substantially equal amounts.

(f) After making the payments hereinabove required, there shall be paid from the Systems Revenues to a "Depreciation Reserve Fund," on or before the first business day of each month while the bonds are outstanding, an amount equal to 3% of the gross monthly revenue of the system until such a time as \$3,000,000.00 is accumulated. The moneys in the Depreciation Fund shall be used for the purpose of paying the costs of replacements made necessary by the depreciation of the System, for the purpose of paying the costs of damage caused by unforeseen catastrophes and for the purpose of paying the costs of maintenance or repairs, renewals or replacements, the costs of acquiring, installing or repairing equipment, and the engineering expenses related to the foregoing; provided, however, the Depreciation Reserve Fund cannot be used without the prior written consent of ANRC. When funds are taken out of the Depreciation Reserve Fund, the monthly deposits shall resume until the Depreciation Reserve Fund reaches \$3,000,000.00. The first payment into the Depreciation Reserve Fund shall be made in one month from the date of the bond.

(g) The Series 2016 Bond shall be specifically secured by a pledge of all the revenues required to be placed into the Series 2016 Bond Fund. This pledge in favor of the Series 2016 Bond is hereby irrevocably made according to the terms of this Ordinance, and the City and its commissioners, aldermen, officers, and employees shall execute, perform, and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

SECTION 11: After making the payments into the Series 2016 ADFA Bond Fund required by Section 10 hereof, there shall be paid from the System Revenues to the Authority the Servicing Fee with respect to the Series 2016 Bond. The Servicing Fee shall be payable on each date interest on the Series 2016 Bond is due and shall be calculated on the same basis as interest on the Series 2016 Bond. The payment of the Servicing Fee with respect to the Series 2016 Bond is expressly made subordinate to the payment of the principal of and interest on the Series 2016 Bond.

SECTION 12: Principal and interest installments on the Series 2016 Bond shall be prepayable prior to maturity in the manner and upon the terms set forth in the bond form appearing in Section 6 hereof.

SECTION 13: The City shall assure that (i) not in excess of ten percent of the proceeds of the Series 2016 Bond is used for Private Business Use (as defined below) if, in addition, the payment of more than ten percent of the principal or ten percent of the interest due on the Series 2016 Bond during the term thereof is, under the terms of the Series 2016 Bond or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of five percent of the proceeds of the Series 2016 Bond are used for a Private Business

Use, and (B) an amount in excess of five percent of the principal or five percent of the interest due on the Series 2016 Bond during the term thereof is, under the terms of the Series 2016 Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said five percent of proceeds of the Series 2016 Bond used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements.

The City shall assure that not in excess of five percent of the proceeds of the Series 2016 Bond are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this Section, "Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

SECTION 14: As long as the Series 2016 Bond is outstanding, the City shall not issue or attempt to issue any bonds having or claimed to be entitled to a priority of or parity with the lien on the revenues of the System over the lien securing the Series 2016 Bond, including any and all bonds for future extensions, betterments, and improvements to the System, except as provided in this Section.

The City may issue additional revenue bonds to finance or pay the cost of constructing extensions, betterments and improvements to the System or to refund outstanding bonds of the City payable from System revenues issued for such purposes on a parity with the lien on System revenues in favor of the Series 2016 Bond if there shall have been procured and filed with the City Clerk and the Bondholder a statement by an independent certified public accountant not in the regular employ of the City reciting the opinion based upon necessary investigation that (i) the net revenues (net revenues being gross revenues of the System less operation and maintenance expenses, but not including depreciation) derived from the operation of the System for the fiscal year preceding the year in which such additional bonds are to be issued were not less than 110 percent of the maximum annual debt service requirements (principal, interest, Servicing Fees and trustees' and paying agents' fees) on all outstanding bonds to which System revenues are pledged and the bonds then proposed to be issued, or (ii) the net revenues to be derived from the operation of the System for the fiscal year succeeding the year in which such additional bonds are proposed to be issued are projected to be sufficient in amount, taking in consideration any enacted increase in revenues, to be not less than 110 percent of the maximum annual debt service requirements (principal, interest, Servicing Fees, and trustees' and paying agents' fees) on all outstanding bonds to which System revenues are pledged and the bonds then proposed to be issued.

The additional bonds, the issuance of which are restricted and conditioned by this Section, shall not be deemed to mean bonds, the security and source of payment of which are subordinate and subject to the priority of the Series 2016 Bond, and such additional bonds may be issued without complying with the terms and conditions of this Section.

The provisions of this Section may be waived by the Bondholder or Bondholders of 75 percent of the principal amount of the Series 2016 Bond at any time outstanding.

SECTION 15: It is covenanted and agreed by the City with the Bondholder and the ANRC that the City will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State of Arkansas, the Agreement, and this Ordinance, including, without limitation, the charging and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, the segregating of the revenues of the System as herein required, and the applying of revenues to the respective funds maintained pursuant to the ordinances authorizing the Prior Bonds identified above and this Ordinance.

The City covenants and agrees that the Bondholder shall have the protection of all the provisions of Act 132 of 1933, and that the City will diligently proceed to enforce those provisions to the end of the Bondholder realizing fully upon its security. If the City shall fail to proceed within 30 days after written request shall have been filed by the Bondholder or ANRC, the Bondholder or ANRC may proceed to enforce all such provisions.

If there be any default in the payment of the principal of and interest on the Series 2016 Bond, or if the City defaults in any Series 2016 ADFA Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance or in the Agreement, the Bondholder and ANRC (with respect to covenants contained in the Agreement) may, by proper suit, compel the performance of the duties of the officials of the City under the laws of the State of Arkansas. In the case of a default in the payment of the principal of and interest on the Series 2016 Bond, the Bondholder may apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the Bondholder with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, repair, and maintenance and to pay the Series 2016 Bond and interest outstanding and to apply the revenues in conformity with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the City. No remedy herein conferred upon or reserved to the Bondholder is intended to be exclusive of any other remedy or remedies herein provided or provided by law, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law. No delay or omission of the Bondholder to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any default or an acquiescence therein; and every power and remedy given by this Ordinance to the Bondholder may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Any costs of enforcement of the Series 2016 Bond or of any provision of this Ordinance, including reasonable attorney's fees, shall be paid by the City.

The Authority may enforce all rights and exercise all remedies available to the Bondholder

in the event the Servicing Fee is not paid when due.

SECTION 16: The City covenants and agrees that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost. While any Sewer Revenue Bonds are outstanding, the City agrees that, to the extent comparable protection is not otherwise provided to the satisfaction of the Bondholder, it will insure and at all times keep insured, in the amount of the actual value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State of Arkansas to assume the risk thereof, all properties of the System against loss or damage from fire, lightning, tornado, winds, riot, strike, civil commotion, malicious damage, explosion, and against loss or damage from any other causes customarily insured against by private companies engaged in a similar type of business. The insurance policies are to be taken with companies approved by the City and the Bondholder, are to carry a clause making them payable to the City and Bondholder as their interests may appear, and satisfactory evidence of insurance shall be filed with the Bondholder. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement, or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement, and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Revenue Fund and if such proceeds shall be insufficient for such purposes, the deficiency shall be supplied first, from moneys in the Depreciation Fund, second, from moneys in the Sewer Operation and Maintenance Fund, and third, from available moneys in the Revenue Fund. Nothing herein shall be construed as requiring the City to expend any funds for operation and maintenance of the System or for premiums on insurance which are derived from sources other than the operation of the System, but nothing herein shall be construed as preventing the City from doing so.

SECTION 17: The City covenants and agrees that, so long as any Sewer Revenue Bonds are outstanding, it will not mortgage, pledge, or otherwise encumber the System or any part thereof or any revenues derived from the operation thereof, except as herein specifically provided, and will not sell, lease, or otherwise dispose of all or any substantial portion of the same.

SECTION 18: The City shall keep or cause to be kept proper books of accounts and records (separate from all other records and accounts of the City) in which complete and correct entries shall be made of all transactions relating to the acquisition, construction, and equipping of the Improvements and relating to the operation of the System and its revenues. Such books shall be available for inspection by the Bondholder and ANRC at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an independent certified public accountant at least once each year. The City agrees that it shall also furnish to the Bondholder and ANRC (1) on or before 30 days after the close of each fiscal year a statement of the operations of the System for the past fiscal year in form and content in the manner hereinafter specified, and (2) on or before 120 days after the close of each fiscal year a copy of the audit report of the Accountant. The first report required by the last preceding sentence shall contain at least the following information: (a) Statement of income and expense for the System; (b) Balance sheet for the System; (c) Schedule of insurance policies and fidelity bonds showing, with respect to each policy and bond, the amount and nature of risk covered, the expiration date, and the name of the insurer; and (d) Schedule of the number of customers (connected and unconnected to the System)

and showing the rate schedule currently in effect. The reports referred to above shall cover the operations of the System for all of the last ensuing fiscal year. . In the event the City fails or refuses to make the audit, the Bondholder or ANRC may have the audit made, and the cost thereof shall be charged against the Sewer Operation and Maintenance Fund.

SECTION 19: When the Series 2016 Bond has been executed by the Mayor and City Clerk and the seal of the City impressed thereon, as herein provided, it shall be delivered to the Bondholder upon the payment of all or a portion of the purchase price in accordance with the Agreement.

The sale proceeds shall be deposited, as and when received, in a special account of the City hereby created in a bank selected by the City that is a member of Federal Deposit Insurance Corporation and designated the "2016 Sewer Construction Fund" (the "**2016 Construction Fund**"). The moneys in the 2016 Construction Fund shall be used for reimbursing the City for costs paid in accomplishing the Improvements, paying expenses incidental thereto, and paying the expenses of issuing the Series 2016 Bond approved in accordance with the Agreement. Payments from the 2016 Construction Fund shall be by check signed by two (2) persons authorized by the Director of the System, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

When the Improvements have been completed and all required expenses paid and expenditures made from the 2016 Construction Fund for and in connection with the accomplishment of the Improvements and the servicing thereof, this fact shall be evidenced by a certificate signed by the Manager of the System and by the consulting engineer, which certificate shall state, among other things, the date of the completion and that all obligations payable from the 2016 Construction Fund have been discharged. A copy of the certificate shall be filed with the depository bank, the Bondholder, and ANRC.

SECTION 20: The City agrees that the Bondholder may pledge the Series 2016 Bond as security for the ADFA Bonds and the Trustee of the ADFA Bonds may exercise any rights and remedies available to the Bondholder under this Ordinance or the Agreement while the Series 2016 Bond is pledged. In addition, the City agrees that while the Series 2016 Bond is pledged, copies of all financial information shall be furnished to the Trustee.

SECTION 21: In the event the offices of Mayor, City Clerk, Manager of the System, Committee, or City Council shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office, or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City, or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal function thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

SECTION 22: It is understood and agreed that the Committee, acting for and on behalf of the City, has custody of and control over the System, operates, maintains, and repairs the System,

and collects and handles System Revenues. Therefore, it is understood and agreed that even though there are some express references to the Committee, all references herein to the City shall, when appropriate in view of the authority and responsibility of the Committee, be construed to mean and include the Committee. So long as the Committee operates the System for the City, performance by the Committee of any right or obligation of the City hereunder shall be deemed performance by the City.

SECTION 23: The provisions of this Ordinance shall constitute a binding contract among the City, the Bondholder, and ANRC, and no variation or change in the undertaking herein set forth shall be made while the Series 2016 Bond is outstanding unless consented to in writing by the Bondholder and ANRC.

SECTION 24: This Ordinance shall not create any right of any kind and no right of any kind shall arise hereunder pursuant to it until the Series 2016 Bond authorized by this Ordinance shall be issued and delivered.

SECTION 25: The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of the Ordinance.

SECTION 26: Reference in this Ordinance to "Bondholder" shall include the original Bondholder or any registered assign thereof.

SECTION 27: All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 28: It is hereby ascertained and declared that the Improvements must be accomplished as soon as possible in order to make the System adequate for the needs of the City and its inhabitants, without which the life, health, safety, and welfare thereof are jeopardized, and that the issuance of the Series 2016 Bond and the taking of the other action authorized by this Ordinance are necessary for the accomplishment thereof. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health, and safety shall take effect and be in force from and after its passage.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

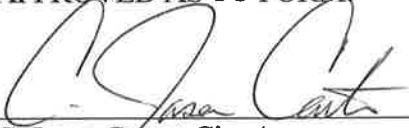
ATTEST:



Mayor Joe A. Smith

Diane Whitbey, City Clerk

APPROVED AS TO FORM:


C. Jason Carter, City Attorney

Prepared by Hilburn, Calhoon, Harper, Pruniski & Calhoun, Ltd., Attorneys at Law

FILED	<u>11:30</u>	A.M.	_____	P.M.
By	<u>City Atty Carter</u>			
DATE	<u>9-6-16</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>J. Bragg</u>			